

1 MORGAN, LEWIS & BOCKIUS LLP  
John S. Battenfeld, Bar No. 119513  
2 john.battenfeld@morganlewis.com  
Max Fischer, Bar No. 226003  
3 max.fischer@morganlewis.com  
Brian D. Fahy, Bar No. 266750  
4 brian.fahy@morganlewis.com  
Karen Y. Cho, Bar No. 274810  
5 karen.cho@morganlewis.com  
300 South Grand Avenue  
6 Twenty-Second Floor  
Los Angeles, CA 90071-3132  
7 Tel: +1.213.612.2500  
Fax: +1.213.612.2501  
8

Attorneys for Defendant  
9 AMAZON.COM SERVICES, LLC (incorrectly  
named) and AMAZON LOGISTICS, INC.  
10

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13

14 HANS SANCHEZ, on behalf of himself and all  
others similarly situated,

15 Plaintiff,  
16

17 vs.

18 GREEN MESSENGERS, INC., a California  
corporation; AMAZON.COM SERVICES,  
LLC, a Delaware limited liability company;  
19 and DOES 1 through 50, inclusive,

20 Defendants.  
21  
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Case No. \_\_\_\_\_

**DEFENDANT AMAZON'S NOTICE  
OF REMOVAL TO FEDERAL COURT**

**[28 U.S.C. §§ 1332, 1441, 1446]**

Complaint Filed: August 13, 2020

1 **TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF**  
2 **CALIFORNIA AND TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE THAT**, incorrectly named Defendant Amazon.com Services,  
4 LLC and Amazon Logistics, Inc.<sup>1</sup> (“Amazon”), by and through its counsel, removes the above-  
5 entitled action to this Court from the Superior Court of the State of California for the County of  
6 Santa Clara, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. Amazon bases its removal on the  
7 following grounds:

8 **I. PROCEDURAL BACKGROUND**

9 1. On August 13, 2020, Plaintiff Hans Sanchez (“Plaintiff”) filed an unverified  
10 putative class action complaint in the Superior Court of the State of California, County of Santa  
11 Clara, entitled *Hans Sanchez, on behalf of himself all others similarly situated v. Green*  
12 *Messengers, Inc., a California corporation; Amazon.com Services, LLC, a Delaware limited*  
13 *liability company; and DOES 1 through 50, inclusive*, Case No. 20CV369262 (the “Complaint”).

14 2. On August 18, 2020, Plaintiff served copies of the Summons, Complaint, Civil  
15 Case Cover Sheet, and Civil Lawsuit Notice on the registered agent for Amazon. True and  
16 correct copies of these documents are attached hereto as **Exhibit A**. Amazon also includes within  
17 **Exhibit A**: the Superior Court’s August 21, 2020 Order Deeming Case Complex and Staying  
18 Discovery and Responsive Pleading Deadline, Plaintiff’s Notice thereof, and the Court’s August  
19 27, 2020 Notice of Rescheduled Case Management Conference. **Exhibit A** constitutes all of the  
20 pleadings, process, and orders served upon Amazon or filed in the Superior Court action.

21 3. Plaintiff alleges that he worked for both Defendants as a non-exempt hourly  
22 delivery driver. (Exh. A, Compl., ¶ 20.) The Complaint defines “Defendants” to mean both  
23 Green Messengers, Inc. (“Green Messengers”) and Amazon. (Exh. A, Compl., ¶ 1.) Plaintiff  
24 seeks to bring his class action on behalf of “all others similarly situated,” and asserts claims on  
25 behalf of the following putative classes and sub-classes:

26  
27  
28 <sup>1</sup> Amazon.com Services, LLC is an erroneously named Defendant. Amazon Logistics, Inc. is the  
corporate entity that contracted with Defendant Green Messengers. *See* ¶ 5, *infra*.

1 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing  
2 agencies and/or any other third parties in hourly or non-exempt positions as  
3 delivery drivers in California during the **Relevant Time Period**.

4 **Meal Period Sub-Class:** All **Hourly Employee Class** members who  
5 worked in a shift in excess of five hours during the **Relevant Time Period**.

6 **Rest Period Sub-Class:** All **Hourly Employee Class** members who  
7 worked a shift of at least three and one-half (3.5) hours during the  
8 **Relevant Time Period**.

9 **Wage Statement Penalties Sub-Class:** All **Hourly Employee Class**  
10 members employed by Defendants in California during the period  
11 beginning one year before the filing of this action and ending when final  
12 judgment is entered.

13 **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class**  
14 members who separated from their employment with Defendants during  
15 the period beginning three years before the filing of this action and ending  
16 when final judgment is entered.

17 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in  
18 California during the **Relevant Time Period**.

19 **Expense Reimbursement Class:** All persons employed by Defendants as delivery  
20 drivers in California who incurred business expenses during the **Relevant Time**  
21 **Period**.

22 (Exh. A, Compl., ¶ 12.)

23 4. Plaintiff seeks class damages for: (1) failure to provide meal periods; (2) failure to  
24 provide rest periods; (3) failure to pay minimum and overtime wages; (4) failure to indemnify for  
25 necessary business expenses; (5) failure to provide accurate written wage statements; (6) failure  
26 to pay all final wages; and (7) unfair competition.

27 5. Based on Plaintiff's theory that he and other putative class member delivery  
28 drivers were jointly employed by Green Messengers and Amazon, Amazon has calculated the  
amount the amount in controversy as set forth below. Amazon Logistics, Inc. (not Amazon.com  
Services LLC) contracted with Green Messengers to provide delivery services performed by  
delivery personnel employed by Green Messengers. Amazon denies that it employed or jointly  
employed Plaintiff or any other Green Messengers delivery drivers. Amazon reserves the right to  
provide additional calculations if Plaintiff's theory changes.

1 **II. REMOVAL IS TIMELY**

2 6. Amazon was served with the Summons and Complaint on August 18, 2020.  
3 Because this Notice of Removal is filed within thirty days of service of the Complaint, it is timely  
4 under 28 U.S.C. §§ 1446(b)(3) and 1453. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*,  
5 526 U.S. 344, 354 (1999). No previous Notice of Removal has been filed or made with this Court  
6 for the relief sought in this removal notice.

7 **III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION UNDER**  
8 **CAFA.**

9 7. Plaintiff brings this action as a putative class action under California Code Civ.  
10 Proc. § 382. (Exh. A, Compl., ¶ 11.)<sup>2</sup> Removal based upon Class Action Fairness Act (“CAFA”)   
11 diversity jurisdiction is proper pursuant to 28 U.S.C. §§ 1441, 1446, and 1453 because: (i)   
12 diversity of citizenship exists between at least one putative class member and one Defendant, (ii)   
13 the aggregate number of putative class members in all proposed classes is 100 or greater; and (iii)   
14 the amount placed in controversy by the Complaint exceeds, in the aggregate, \$5 million,   
15 exclusive of interest and costs. 28 U.S.C. §§ 1332(d)(2) & (d)(5)(B), 1453. Although Amazon   
16 denies Plaintiff’s factual allegations and denies that Plaintiff—or the classes he purports to   
17 represent—is entitled to the relief requested, based on Plaintiff’s allegations in the Complaint and   
18 prayer for relief, all requirements for jurisdiction under CAFA have been met in this case.

19 **A. Amazon Is Not a California Citizen, and Minimal Diversity of Citizenship**  
20 **Exists.**

21 8. To satisfy CAFA’s diversity requirement, a party seeking removal need only show   
22 that minimal diversity exists, that is, that one putative class member is a citizen of a state different   
23 from any defendant. 28 U.S.C. § 1332(d)(2); *United Steel, Paper & Forestry, Rubber, Mfg.,*   
24 *Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d   
25 1087, 1090-91 (9th Cir. 2010) (finding that to achieve its purposes, CAFA provides expanded   
26 original diversity jurisdiction for class actions meeting the minimal diversity requirement set forth   
27 in 28 U.S.C. § 1332(d)(2)).

28 <sup>2</sup> Amazon denies, and reserves the right to contest at the appropriate time, that this action can properly proceed as a class action. Amazon further denies Plaintiff’s claims and denies that he can recover any damages.

1           9.       The Complaint alleges that “Plaintiff HANS SANCHEZ is, and at all relevant  
2 times mentioned herein [was], an individual residing in the State of California.” (Exh. A, Compl.,  
3 ¶ 5.) The Complaint does not allege that Plaintiff is a citizen of any other state. “An individual is  
4 a citizen of the state in which he is domiciled.” *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016,  
5 1019 (C.D. Cal. 2002) (citing *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)).  
6 For purposes of diversity of citizenship jurisdiction, citizenship is determined by the individual’s  
7 domicile at the time that the lawsuit is filed. *Armstrong v. Church of Scientology Int’l*, 243 F.3d  
8 546, 546 (9th Cir. 2000) (citing *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986)). Evidence of  
9 continuing residence creates a presumption of domicile. *Washington v. Hovensa LLC*, 652 F.3d  
10 340, 395 (3d Cir. 2011). Therefore, Plaintiff is a citizen of California for diversity jurisdiction  
11 purposes. Moreover, Plaintiff has brought claims on behalf of putative class members at least  
12 some of whom are domiciled in California. Compl., ¶ 12. Thus, Plaintiff and at least one  
13 putative class member are citizens of California for diversity jurisdiction purposes.

14           10.       For CAFA diversity purposes, a limited liability company is deemed to be a citizen  
15 of the state where it has its principal place of business and under whose laws it is organized. 28  
16 U.S.C. § 1332(d)(10); *see also Ferrell v. Express Check Advance of Georgia*, 591 F.3d 698, 704  
17 (4th Cir. 2010) (holding that a limited liability company qualifies as an “unincorporated  
18 association” under Section 1332(d)(10) for purposes of CAFA removal); *Marroquin v. Wells*  
19 *Fargo, LLC*, 2011 WL 476540, \*2 (S.D. Cal. Feb 3, 2011) (same). Amazon.com Services, LLC  
20 is organized under the laws of Delaware, and has its corporate headquarters and principal place of  
21 business in Seattle, Washington. Amazon.com Sales, Inc. is the only member of Amazon.com  
22 Services LLC. Amazon.com Sales, Inc. is a Delaware corporation with its corporate headquarters  
23 and principal place of business in Washington.

24           11.       Amazon Logistics, Inc., the corporation that entered into a delivery services  
25 contract with Green Messengers, is a citizen of Washington and Delaware for the purposes of  
26 diversity jurisdiction. Under 28 U.S.C. § 1332, “a corporation shall be deemed to be a citizen of  
27 every State and foreign state by which it has been incorporated and of the State or foreign state  
28 where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). The “principal place of

1 business” for the purpose of determining diversity subject matter jurisdiction refers to “the place  
2 where a corporation’s officers direct, control, and coordinate the corporation’s activities . . . [I]n  
3 practice it should normally be the place where the corporation maintains its headquarters—  
4 provided that the headquarters is the actual center of direction, control, and coordination, i.e., the  
5 ‘nerve center,’ and not simply an office where the corporation holds its board meetings . . . .” See  
6 *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S.Ct. 1181, 1192 (2010). Amazon Logistics, Inc.  
7 is incorporated under the laws of Delaware and has its headquarters and principal place of  
8 business in Seattle, Washington.

9 12. Amazon’s corporate decisions generally are made in Seattle, Washington,  
10 including its operation, executive, administrative, and policymaking decisions. The majority of  
11 Amazon’s executive officers principally conduct their business from headquarters in Washington.  
12 Thus, at all times relevant hereto, Amazon’s citizenship, whether Amazon.com Services, LLC or  
13 Amazon Logistics, Inc., has been Delaware and Washington, and not California.

14 13. Therefore, based on the Complaint, at least one member of the putative class is a  
15 citizen of a state different than one Defendant. As a result, diversity jurisdiction exists under  
16 CAFA. 28 U.S.C. § 1332(d)(2)(A) (requiring only “minimal diversity” under which “any  
17 member of a class of plaintiffs is a citizen of a State different from any Defendant”).

18 **B. The Putative Class Has More than 100 Members.**

19 14. Based on Plaintiff’s definition of the putative class, it contains more than 100  
20 members. Based on available data, Amazon is informed and believes that Green Messengers  
21 employed more than 700 individuals who delivered products to Amazon customers in California  
22 during the period August 13, 2016 through December 1, 2019, when Amazon and Green  
23 Messengers terminated their contract for delivery services.

24 **C. The Amount in Controversy Exceeds Five Million Dollars.**

25 15. Pursuant to CAFA, the claims of the individual members in a class action are  
26 aggregated to determine if the amount in controversy exceeds \$5 million, exclusive of interest and  
27 costs. 28 U.S.C. § 1332(d)(6). Because Plaintiff does not expressly plead a specific amount of  
28 class damages, Amazon need only show that it is more likely than not that the amount in

1 controversy exceeds \$5 million. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376  
2 (9th Cir. 1997).

3 16. Amazon’s burden to establish the amount in controversy is by a preponderance of  
4 the evidence. *Dart Cherokee Basin Operating Company, LLC v. Owens*, 135 S. Ct. 547 (2014);  
5 *see also Jordan v. Nationstar Mortg., LLC*, 781 F.3d 1178, 1183 (9th Cir. 2015) (citing *Dart*  
6 *Cherokee* for the proposition that there is no anti-removal presumption against CAFA cases). A  
7 removing party seeking to invoke CAFA jurisdiction “need include only a plausible allegation  
8 that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*, 135 S. Ct. at  
9 554. “If a federal court is uncertain about whether ‘all matters in controversy’ in a purported  
10 class action ‘do not in the aggregate exceed the sum or value of \$5 million,’ the court should err  
11 in favor of exercising jurisdiction over the case.” Senate Judiciary Report, S. REP. 109-14, at 42  
12 (2005) (citation omitted).

13 17. “[A] removing defendant is not obligated to research, state and prove the  
14 plaintiff’s claims for damages.” *Sanchez v. Russell Sigler, Inc.*, 2015 WL 12765359, \*2 (C.D.  
15 Cal. April 28, 2015) (citation omitted). *See also LaCross v. Knight Transportation Inc.*, 775 F.3d  
16 1200, 1203 (9th Cir. 2015) (rejecting plaintiff’s argument for remand based on the contention that  
17 the class may not be able to prove all amounts claimed: “Plaintiffs are conflating the amount in  
18 controversy with the amount of damages ultimately recoverable.”); *Ibarra v. Manheim Invs., Inc.*,  
19 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (in alleging the amount in controversy, defendants “are  
20 not stipulating to damages suffered, but only estimating the damages in controversy.”). The  
21 ultimate inquiry is what amount is put “in controversy” by the plaintiff’s complaint, not what a  
22 defendant will actually owe. *LaCross*, 775 F.3d at 1202 (citation omitted) (explaining that courts  
23 are directed “to first look to the complaint in determining the amount in controversy”).

24 18. Under *Dart Cherokee*, a removing defendant is not required to submit evidence in  
25 support of its removal allegations. *Salter v. Quality Carriers, Inc.*, No. 20-55709, 2020 WL  
26 5361459, at \*4 (9th Cir. Sept. 8, 2020) (“a removing defendant’s notice of removal **need not**  
27 **contain evidentiary submissions** but only plausible allegations of jurisdictional elements.”)  
28 (internal quotations omitted) (emphasis added). However, as detailed below, Amazon has both

1 plausibly alleged and established that the amount in controversy exceeds \$5 million and that the  
2 Court has jurisdiction pursuant to CAFA. As discussed below, when the claims of the putative  
3 class members in the present case are aggregated, their claims put into controversy over \$5  
4 million in potential damages. 28 U.S.C. § 1332(d)(2).

5 19. Although Amazon denies Plaintiff’s factual allegations and denies that he or the  
6 classes and subclasses he seeks to represent are entitled to the relief for which he has prayed,  
7 Plaintiff’s allegations and prayer for relief have “more likely than not” put into controversy an  
8 amount that exceeds the \$5 million threshold when aggregating the claims of the putative class  
9 members as set forth in 28 U.S.C. § 1332(d)(6).<sup>3</sup>

10 20. As explained above, Plaintiff seeks to represent a putative class of more than 700  
11 members. Amazon has reviewed certain data concerning the putative class and subclasses of  
12 Green Messengers delivery drivers that Plaintiff seeks to represent. Based on the allegations in  
13 the Complaint, Plaintiff has put more than \$5 million in controversy as set forth below, and  
14 CAFA removal is appropriate.

15 **1. Plaintiff’s First and Second Causes of Action For Failure to Provide**  
16 **Meal and Rest Periods Put at Least \$2,486,274.70 in Controversy.**

17 21. Plaintiff seeks to represent a “Meal Period Sub-Class” of all “persons employed by  
18 Defendants and/or any staffing agencies and/or any other third parties in hourly or nonexempt  
19 positions as delivery drivers in California . . . who worked in a shift in excess of five hours during  
20 the Relevant Time Period.” (Exh. A, Compl. ¶ 12.) Plaintiff also seeks to represent a “Rest  
21 Period Sub-Class,” which includes delivery drivers “who worked a shift of at least three and one-

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22 <sup>3</sup> This Notice of Removal discusses the nature and amount of damages placed at issue by  
23 Plaintiff’s Complaint. Amazon’s references to specific damage amounts and citation to  
24 comparable cases are provided solely for establishing that the amount in controversy is more  
25 likely than not in excess of the jurisdictional minimum. Amazon maintains that each of  
26 Plaintiff’s claims is without merit and that Amazon is not liable to Plaintiff or any putative class  
27 member. Amazon expressly denies that Plaintiff or any putative class member is entitled to  
28 recover any of the penalties sought in the Complaint. In addition, Amazon denies that liability or  
damages can be established on a class-wide basis. No statement or reference contained herein  
shall constitute an admission of liability or a suggestion that Plaintiff will or could actually  
recover any damages based upon the allegations contained in the Complaint or otherwise. “The  
amount in controversy is simply an estimate of the total amount in dispute, not a prospective  
assessment of [Amazon’s] liability.” *Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th  
Cir. 2010).



1 half (3.5) hours during the Relevant Time Period.” (*Id.*) Regarding these sub-classes, Plaintiff  
2 alleges that “at all relevant times during the applicable limitations period, Defendants maintained  
3 a policy or practice of ***not providing***” putative sub-class members meal or rest periods or paying  
4 premium wages for missed such periods. (Exh. A, Compl. ¶¶ 57–58 and 64–65 (emphasis  
5 added).) The Complaint expressly alleges that “Plaintiff and the putative class members were ***not***  
6 ***provided*** with meal periods of at least thirty (30) minutes for each five (5) hour work period”, and  
7 “were ***not provided*** with rest periods of at least ten (10) minutes for each four (4) hour work  
8 period, or major fraction thereof...” (*Id.* ¶¶ 21, 24, 26) (emphasis added). Further, with respect  
9 to both meal and rest breaks, Plaintiff further alleges, “Defendants’ productivity  
10 requirements...***required Plaintiff and the putative class to work through their meal [and rest]***  
11 ***periods*** in order to complete their daily deliveries on time.” Compl., ¶¶ 22, 27 (emphasis added).

12 22. Labor Code § 512(a) states that non-exempt employees must be provided an  
13 uninterrupted meal period of not less than 30 minutes for a work period of more than five  
14 hours. Labor Code § 226.7(b) states that if an employer fails to provide an employee a meal or  
15 rest period in accordance with state law, the employer shall pay the employee one additional hour  
16 of pay for each workday that the meal or rest period is not provided. The Complaint alleges that  
17 Defendants failed to pay Plaintiff and Class Members this additional hour of pay when required  
18 meal and rest periods were not provided. (Exh. A, Compl., ¶¶ 55, 65.)

19 23. Based on Plaintiff’s class definition, Amazon’s review of available data showed at  
20 least 83,153 shifts worked by Green Messengers personnel making deliveries to Amazon  
21 customers that Amazon is informed and believes involved work periods of more than five hours,  
22 during the relevant period, August 13, 2016 to November 15, 2019.<sup>4</sup> Amazon is in possession of  
23 a wage statement for a Green Messengers driver from 2017 that shows that driver was paid an  
24 hourly rate of \$14.95. Amazon is informed and believes that Plaintiff’s hourly rate was \$16.00.  
25 Because the Complaint alleges that Defendants did not provide legally required meal or rest  
26 periods and *required* Green Messengers delivery drivers to work through their meal and rest  
27

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28 <sup>4</sup> November 15, 2019 is the last date that Green Messengers made deliveries under its delivery contract with Amazon Logistics, Inc.

1 periods on a daily basis, this places an amount in controversy as to meal and rest period premium  
2 pay based on an assumed 100 percent violation rate. Under Plaintiff’s theories, Amazon (and  
3 Green Messengers) would be liable for two hours of pay for each shift worked by a delivery  
4 driver class member in excess of five hours—one for the alleged meal period violation and one  
5 for the alleged rest period violation. Therefore, assuming an hourly rate of \$14.95, the first and  
6 second causes of action place at least \$2,486,274.70 in controversy: (\$14.95 per hour x 83,153  
7 shifts) + (\$14.95 per hour x 83,153 shifts) = **\$2,486,274.70**.

8 **2. Plaintiff’s Third Cause of Action For Failure to Pay Hourly and**  
9 **Overtime Wages Places \$932,353.01 in Controversy.**

10 24. The Complaint alleges that “[a]t all relevant times during the applicable limitations  
11 period, Defendants maintained a *policy or practice of automatically deducting one-half hour*  
12 *from Plaintiff’s timecard on every workday for a meal period*, regardless of whether or not  
13 Plaintiff [or the putative class member] was provided a meal period.” (Exh. A, Compl., ¶¶ 84–85  
14 (emphasis added).) The Complaint alleges that Plaintiff and putative class members were not  
15 paid for these hours due to the automatic deduction policy, “even though the workers were  
16 working during that time.” (*See id.*, ¶ 35.) The Complaint also alleges that Defendant “failed to  
17 pay hourly wages to Plaintiff and similarly situated putative class members for all time worked,  
18 including but not limited to, overtime wages at statutory and/or agreed rates by suffering or  
19 permitting him to work during unpaid meal periods and/or failing to properly pay Plaintiff for all  
20 overtime hours worked.” (*Id.* ¶ 87.) The Complaint further alleges that “Defendants required and  
21 expected Plaintiff and the putative class to spend substantial amounts of time under the control of  
22 Defendants and performing non-compensable tasks” for which they “were paid nothing.” (*Id.*, ¶  
23 30.) The Complaint also alleges that Plaintiff “regularly worked shifts of *eight to twelve hours*  
24 *per day*.” (*Id.*, ¶ 23) (emphasis added). Amazon is informed and believes that the typical shift  
25 length for a Green Messengers driver exceeded 8 hours.

26 25. Labor Code section 510 requires that any work “in excess of eight hours in one  
27 workday” must be compensated “at the rate of no less than one and one-half times the regular rate  
28 of pay for an employee.” Cal. Lab. Code § 510(a).

1           26.     In this claim, Plaintiff is alleging that Defendants unlawfully auto-deducted 30  
2 minute meal periods from his and class members' time every day, even though they were required  
3 to work through their meal periods each day. He further alleges that the half hour that Defendants  
4 allegedly illegally deducted from each shift resulted in Plaintiff and class members working  
5 unpaid overtime, such that the unlawfully deducted half hour of time must be compensated at the  
6 employees' overtime rate of pay. In this regard, Plaintiff alleges that he "regularly worked shifts  
7 of eight to twelve hours per day." (Exh. A, Compl. ¶ 23.) Assuming a \$14.95 hourly rate,  
8 Plaintiff's third cause of action thus places at least \$932,353.01 in controversy:  $\$14.95 \times 1.5 \times 0.5$   
9  $\text{hours} \times 83,153 \text{ shifts} = \text{\$932,353.01}$ . An additional amount is placed in controversy for this cause  
10 of action based on Plaintiff's allegation that putative class members spent "substantial amounts of  
11 time" performing work for which for which they were paid nothing.

12                           **3.     Plaintiff's Fifth Cause of Action For Failure to Provide Accurate**  
13                           **Written Wage Statements Places \$133,250 in Controversy.**

14           27.     Plaintiff seeks to represent a "Wage Statement Penalties Sub-Class" of all delivery  
15 drivers employed by Defendants in California "during the period beginning one year before the  
16 filing of this action . . . ." (Exh. A, Compl. ¶ 12.) Plaintiff alleges that Defendants intentionally  
17 failed to provide Plaintiff and the putative members of this sub-class with written accurate  
18 itemized wage statements. (*Id.* ¶¶ 96–99.) For this cause of action, the Complaint seeks "\$50 for  
19 the initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100 for  
20 each subsequent pay period in which a violation of Labor Code section 226(a) occurred . . . ."  
21 (Exh. A, Compl. ¶ 101.)

22           28.     Here, during the relevant one-year statute of limitations period, Amazon is  
23 informed and believes that Green Messengers provided wage statements to putative class  
24 members on a semi-monthly basis. During the period of August 13, 2019 to November 15, 2019  
25 (shortly before Green Messengers and Amazon ended their business relationship), Amazon is  
26 informed and believes that 299 Green Messengers employees made deliveries. This would mean  
27 that Green Messengers issued approximately 1,482 wage statements during this periods to these  
28 employees. Thus, Plaintiff's fifth cause of action for failure to provide accurate wage statements

1 puts \$133,250.00 in controversy: 299 employees during the applicable period x \$50 penalty for  
2 initial pay period = \$14,950 + (1,183 subsequent pay periods x \$100 penalty = \$118,300,  
3 equaling total claimed penalties of **\$133,250.00**.

4 **4. Plaintiff's Sixth Cause of Action For Failure to Pay All Final Wages**  
5 **Places at Least \$2,511,600 in Controversy.**

6 29. Plaintiff seeks to represent a "Waiting Time Penalties Sub-Class" of all persons  
7 employed by Defendants "who separated from their employment with Defendants during the  
8 period beginning three years before the filing of this action and ending when final judgment is  
9 entered." (Exh. A, Compl. ¶ 12.) Plaintiff alleges that Defendant willfully failed to timely pay  
10 final wages to him and putative members of this sub-class. (*Id.* ¶¶ 107–111.) Specifically,  
11 Plaintiff alleges, "During the applicable limitations period, Defendants failed to pay Plaintiff all  
12 final wages in accordance with the Labor Code by failing to timely pay those final wages,"  
13 (Compl., ¶ 107), and "at all relevant time during the applicable limitations period, Defendants  
14 have failed to timely pay **Waiting Time Penalties Sub-Class** members all of their final wages in  
15 accordance with the Labor Code." (*Id.*, ¶ 108) (bolding in original).

16 30. During the three-year statute of limitations period applicable to a Section 203  
17 claim, Amazon is informed and believes that at least 700 employees of Green Messengers who  
18 performed deliveries to Amazon customers separated their employment. Amazon is informed and  
19 believes that all such employees ended their employment with Green Messengers more than 30  
20 days before the Complaint was filed. Plaintiff alleges that these former employees are still owed  
21 unpaid final wages, the Complaint seeks a full 30 days of waiting time penalties for each  
22 employee who was terminated or resigned during the applicable limitations period. (*Id.* ¶¶ 107,  
23 108.) The Complaint does not allege that all overtime and minimum wages owed have been paid  
24 to these employees, and indeed seeks those wages as damages. *See Ford v. CEC Entm't, Inc.*,  
25 2014 WL 3377990 (N.D. Cal. 2014) ("Assuming a 100% violation rate is thus reasonably  
26 grounded in the complaint . . . [b]ecause no averment in the complaint supports an inference that  
27 these sums were ever paid."). Assuming that these employees' final rate of pay was \$14.95 per  
28 hour, and that they worked at least eight hour shifts on average, the Complaint puts in controversy

1 Labor Code Section 203 waiting time penalties of 3,588.00 per terminated employee (\$14.95 x 8  
2 x 30), or at least **\$2,511,600** in the aggregate (\$3,588.00 x 700).

3 31. The total amount in controversy for these five causes of action alone is therefore at  
4 least **\$6,063,477.71** (\$2,486,274.70 + \$932,353.01 + \$133,250 + \$2,511,600), based on the  
5 allegations in the claims discussed above.<sup>5</sup> Thus, the CAFA \$5 million requirement is satisfied  
6 based on these claims alone. However, Plaintiff's other claims place additional amounts in  
7 controversy.

8 **5. Plaintiff's Fourth Cause of Action For Failure to Indemnify Places**  
9 **Additional Amounts in Controversy.**

10 32. Plaintiff seeks to represent an "Expense Reimbursement Class" of all "persons  
11 employed by Defendants as delivery drivers in California who incurred business expenses during  
12 the Relevant Time Period." (Exh. A, Compl. ¶ 12.) Plaintiff alleges that he and the putative class  
13 members "were required to utilize their own personal cell phones to perform their job duties," but  
14 that they "were not reimbursed for business expenses incurred in using their personal cell  
15 phones." (*Id.* ¶¶ 37–38.) The Complaint does not allege the amounts sought for these expenses,  
16 but Plaintiff's fourth cause of action for failure to indemnify places some additional amount in  
17 controversy, causing the amount in controversy to further exceed \$5 million.

18 **6. Plaintiff's Request for Attorneys' Fees Places Additional Amounts in**  
19 **Controversy, Further Exceeding the CAFA Threshold.**

20 33. Plaintiff seeks to recover attorneys' fees under various provisions of the Labor  
21 Code, including section 226. (Exh. A, Compl. ¶¶ 57, 68, 94, 101, 112, 130, and Prayer for Relief  
22 ¶ 12.) Future attorneys' fees are properly included in determining the amount in controversy,  
23 including for class actions seeking fees under Labor Code Section 226. *See Fritsch v. Swift*  
24 *Transportation Co. of Arizona, LLC*, 899 F.3d 785, 793–94 (9th Cir. 2018) ("Because the law  
25 entitles [the plaintiff] to an award of attorneys' fees if he is successful, such future attorneys' fees  
26 are at stake in the litigation, and must be included in the amount in controversy."). The Ninth  
27 Circuit held that future fee estimates can be based on "customary rates and proper fees," and that

28 <sup>5</sup> Even conservatively using a lower average hourly rate of \$13.25, the amount in controversy  
would still exceed \$5 million, totaling at least \$5,389,137.44, using the formulas set forth above.

1 “a percentage-based method,” such as 25% of the amount in controversy, may also be relevant  
2 when estimating the amount of fees included in the amount in controversy. *Id.* at 795 and 796, fn.  
3 6.

4 34. Plaintiff’s counsel have previously presented to courts, via fee motions in class  
5 actions, hourly rates of \$750 to \$925, and have claimed to have spent a range of 170.9 hours to  
6 over 1,000 hours prosecuting similar claims with the lodestar amounts between \$723,492.50 and  
7 \$5,134,454. *See, e.g.*, Defendant’s Request for Judicial Notice, ¶¶ 1-5, Exh. 1 [*Bickley*] (hourly  
8 rate of \$750, over 1,000 hours of work, seeking a lodestar amount of \$5,134,454), Exh. 2  
9 [*Mathien*] hourly rate of \$795, 170.9 hours of work, seeking a lodestar amount of \$723,492), Exh.  
10 3 [*Ortega*] (hourly rate of \$825, over 1,000 hours of work, and seeking a lodestar amount of  
11 \$5,498,318). Plaintiff’s counsel have received attorneys’ fees in certain class actions ranging  
12 from \$1,666,666.66 to \$9,333,333.33, representing at least 25% of the common fund. *See, e.g.*,  
13 *Bickley v. Schneider Nat’l Carriers, Inc.*, No. 4:08-CV-05806-JSW, 2016 WL 6910261, at \*4  
14 (N.D. Cal. Oct. 13, 2016) (awarding \$9,333,333.33 in attorneys’ fees); *Mathein v. Pier 1 Imports*  
15 (*U.S.*), Inc., No. 116CV00087DADSAB, 2018 WL 1993727, at \*13 (E.D. Cal. Apr. 27, 2018)  
16 (awarding \$1,166,666.66 in attorneys’ fees).

17 35. Using 25% of the amount in controversy in this case, as detailed above, the  
18 inclusion of attorneys’ fees would add at least another \$1,515,869.43 in controversy (25% of  
19 \$6,063,477.71), bringing the total amount in controversy to at least **\$7,579,347.14**.<sup>6</sup> Even using  
20 lower lodestar amounts from the prior cases referenced above, each of those amounts would cause  
21 the amount in controversy to further exceed \$5,000,000.

22 **D. CAFA’s Exceptions to Removal Do Not Apply.**

23 36. CAFA’s “home-state” and “local controversy” exceptions do not apply to this  
24 removal. The “home state” exception prevents CAFA removal only when all “primary  
25 defendants” are citizens of the state in which the action was filed. 28 U.S.C. § 1332(d)(4)(B);  
26 *Phillips v. Kaiser Found. Health Plan, Inc.*, 953 F. Supp. 2d 1078, 1086 (N.D. Cal. 2011)

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27 <sup>6</sup> As noted in footnote 5, *supra*, utilizing a lower average hourly rate of \$13.25 per hour, the total  
28 amount in controversy, inclusive of 25% of \$5,389,137.44 (\$1,347,284.36), puts at least  
\$6,736,421.80 in controversy.

1 (“[Home state] test requires that all ‘primary defendants’ be residents of the same state in which  
2 the action is filed.”). Here, Plaintiff brought all claims in the Complaint against Amazon and  
3 Green Messengers, seeking damages against both without distinction. (Exh. A, Compl. ¶¶ 46–  
4 130, Prayer for Relief, ¶¶ 4–13) (alleging violations against both Defendants equally.) Because  
5 Plaintiff seeks to recover amounts equally against the Defendants, Amazon is a “real target” of  
6 the lawsuit and is a primary defendant in this case. *See Vodenichar v. Halcon Energy Properties,*  
7 *Inc.*, 733 F.3d 497, 506 (3d Cir. 2013) (finding that all defendants were “primary defendants”  
8 when the plaintiff appeared to apportion liability equally among them); *Harrington v. Mattel,*  
9 *Inc.*, No. C07-05110 MJJ, 2007 WL 4556920, at \*5 (N.D. Cal. Dec. 20, 2007) (holding that  
10 Mattel, Inc. and its wholly owned subsidiary, Fisher-Price, Inc., were both “primary defendants”).  
11 Amazon is not a citizen of California, the state where this action was originally filed, and so the  
12 home state exception to CAFA removal does not apply.

13 37. The “local controversy” exception to CAFA jurisdiction also does not apply  
14 because during the three-year period prior to the filing of this action, more than one “class action  
15 has been filed asserting the same or similar factual allegations against any of the defendants on  
16 behalf of the same or other persons . . . .” *See* 28 U.S.C. § 1332(d)(4)(A); *see also Chalian v.*  
17 *CVS Pharmacy, Inc.*, No. CV1608979ABAGRX, 2017 WL 1377589, at \*3 (C.D. Cal. Apr. 11,  
18 2017) (holding that the local controversy exception did not apply where similar class action  
19 lawsuits had been filed against defendants in the past three years).

20 38. On May 26, 2020, Plaintiff Francisco Zuleta filed a class action complaint in the  
21 Superior Court of California, County of Los Angeles, which asserted similar Labor Code  
22 violations against Amazon on behalf of a class of other delivery drivers who worked for a  
23 different delivery service provider and were alleged to also be employed by Amazon. Attached  
24 hereto as **Exhibit B** is a true and correct copy of this class action complaint, which was filed in  
25 *Francisco Zuleta on behalf of himself and others similarly situated v. Rapid Pasadena Services,*  
26 *LLC, a limited liability company; Amazon.com LLC, a limited liability company; Amazon.com*  
27 *Services LLC, a limited liability company; Amazon Logistics, Inc., a corporation; Amazon*  
28 *Fulfillment Services, Inc., a corporation; and Does 1 to 100, Inclusive*, Los Angeles Superior

1 Court, Case No. 20STCV20163. In addition, on August 24, 2018, Yolanda Champion filed a  
2 putative class action complaint in the Northern District of California, which asserted similar  
3 Labor Code violations against Amazon on behalf of a class of other delivery drivers who worked  
4 for a different delivery service provider and were alleged to also be employed by Amazon.  
5 Attached hereto as **Exhibit C** is a true and correct copy of this class action complaint, which was  
6 filed in *Yolanda Champion, on behalf of herself, all others similarly situated v. Amazon.com,*  
7 *LLC, a Delaware limited liability company*<sup>7</sup>; *NEA Delivery, LLC, dba Fast Delivery Services, a*  
8 *California limited liability company, and Does 1 through 50, inclusive*, Northern District of  
9 California Case No. 3:18-cv-05222. Therefore, the “local controversy” exception does not  
10 apply.<sup>8</sup> See 28 U.S.C. § 1332(d)(4)(A).

#### 11 **IV. VENUE**

12 39. This action was originally filed in the California Superior Court for the County of  
13 Santa Clara. Initial venue is therefore proper in this district, pursuant to 28 U.S.C. § 1441(a),  
14 because it encompasses the county in which this action has been pending.

#### 15 **V. NOTICE**

16 40. Amazon will promptly serve this Notice of Removal on all parties and will  
17 promptly file a copy of this Notice of Removal with the clerk of the state court in which the  
18 action is pending, as required under 28 U.S.C. § 1446(d).

#### 19 **VI. CONCLUSION**

20 Based on the foregoing, Amazon requests that this action be removed to this Court. If any

21 \_\_\_\_\_  
22 <sup>7</sup> Effective January 1, 2018, Amazon.com LLC merged with Amazon Fulfillment Services, Inc.  
23 and changed its name to Amazon.com Services, Inc. on that same date. Effective December 30,  
24 2019, Amazon.com Services, Inc. converted to Amazon.com Services LLC, the named defendant  
25 in this action.

26 <sup>8</sup> The “local controversy” exception also does not apply if Amazon Logistics, Inc. is viewed as  
27 the proper defendant. For example, on March 8, 2019, Plaintiffs Shaun Baskerville, Jonathan  
28 Davis, and Caesar Juarez filed a first amended consolidated class action complaint in the Superior  
Court of California for the County of Los Angeles, which asserted class action claims based on  
the same or similar Labor Code sections against Amazon Logistics, Inc. on behalf of delivery  
drivers who worked for another service provider. Attached hereto as **Exhibit D** is a true and  
correct copy of this class action complaint, which was filed in *Shaun Baskerville; Jonathan*  
*Davis; Caesar Juarez on behalf of themselves, all others similarly situated, and the general*  
*public v. Prompt Delivery, Inc., DBA Southern California Messengers; Amazon Logistics, Inc.*  
*and DOES 1 through 20, inclusive*, Los Angeles Superior Court, Case No. BC634669. (See Exh.  
C ¶¶ 50, 60–147.)



1 question arises as to the propriety of the removal of this action, Amazon respectfully requests the  
2 opportunity to present a brief and oral argument in support of its position that this case is subject  
3 to removal.

4 Dated: September 17, 2020

MORGAN, LEWIS & BOCKIUS LLP

6 By /s/ John S. Battenfeld  
7 John S. Battenfeld  
8 Max Fischer  
9 Brian D. Fahy  
10 Karen Y. Cho  
11 Attorneys for Defendants  
12 AMAZON.COM SERVICES, LLC  
13 (incorrectly named) and AMAZON  
14 LOGISTICS, INC.  
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